

FILE COPY

Office - Supreme Court, U.S.
FILED
MAY 28 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 826

IRENE B. WHETSTONE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION OF IRENE B. WHETSTONE FOR A WRIT
OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT, AND
BRIEF IN SUPPORT THEREOF.

† IRENE B. WHETSTONE,

Pro se

INDEX.

	PAGE
Summary and Short Statement of the Matter Involved	2
Contested Matter	3
Reasons Relied Upon for a Grant of a Writ of Certiorari	3
Brief in Support of Petition for Writ of Certiorari	15
Opinions of the Courts Below	15
Jurisdiction	15
Statement	16
Specification of Errors	17
Summary of Argument	17
Point I—Inasmuch as the Constitution is the supreme Law of the Land, and it requires that all officers and representatives empowered by it shall take an oath to support it, may the Federal Courts deny or be denied their judicial power constitutionally conferred? Within the answer to this question lies the fate of constitutional Government	18
Point II—Should a decree, written by the Court, which is in contravention of the Constitution, be less vulnerable to attack than such decree when issued by the legislature? And, what authority is responsible for reversing such decree, or for reconciling or modifying decisions in conflict with each other or with the statutes, if not the Supreme Court of the United States?	20
Point III—Is it desirable to permit the establishment of legal precedents which (1) look to the merits of the case in denying jurisdiction, (2) inaccurately appraise the "factual situation" of the Complaint, (3) sustain a motion to dismiss	

which, legally interpreted, admits the allegations of the complaint, but denies the plaintiff's right to judicial remedy, while holding that such right is under the control of the party admitting the allegations, (4) fail to require responsive pleading by respondent, and, (5) encourage coercive and intimidating measures which cannot be enforced?	22
Conclusion	25

TABLE OF CASES.

Ableman v. Booth, 62 U. S. 506, 518-520	20
Aetna Life Insurance Co. v. Haworth, 300 U. S. 227, 239-240	7
Barden v. Northern Pac. R. R. Co., 154 U. S. 288, 322	22
Chisholm v. Georgia, 2 Dall. (U. S.) 419, 475-478	16, 20
Cohens v. Virginia, 6 Wheat. (U. S.) 264, 378, 379, 383, 392-394	16, 20
Evans v. Gore, 253 U. S. 245, 251, 252, 255	16
Fair v. Kohler, 228 U. S. 22, 25	23
General Inv. Co. v. N. Y. C. R. R. Co., 271 U. S. 228, 230, 231	23
Hayburn Case, 2 Dall. (U. S.) 409	20
Hodgson v. Bowerbank, 5 Cranch (U. S.) 303, 304	20
Ickes v. Fox, 300 U. S. 82, 96	24
Marbury v. Madison, 1 Cranch 137, 180	19
Martin v. Hunter, 1 Wheat. (U. S.) 304, 327-330	16, 20
Moore v. New York Cotton Exchange, 270 U. S. 593, 608	9, 23
Nashville (The Mayor) v. Cooper, 6 Wall. (U. S.) 247, p. 250	13
Old Colony Tr. Co. v. Com. Int. Rev., 279 U. S. 716, 723	16

	PAGE
Passenger Cases, 7 How. (U. S.) 283, 470	22
Patton v. United States, 281 U. S. 276, 292	10
Pope v. United States, 323 U. S. 8-14	20
Swift & Co. v. United States, 111 U. S. 22, 29	16
Tindal v. Wesley, 167 U. S. 204, 213	24
United States v. Butler, 297 U. S. 1, 58	16
United States v. Klein, 13 Wall. (U. S.) 128, 146, 147	20, 23
United States v. Lee, 106 U. S. 196, 218, 219, 220, 221	16, 24
Van Horne's Lessee v. Dorrance, 2 Dall. (U. S.) 304, 308, 309, 311, 312	16, 20

**COMMENTS ON CASES CITED BY RESPONDENT
TO DISTINGUISH, ETC.**

Lockerty v. Phillips, 319 U. S. 182	5
Massachusetts v. Mellon, 262 U. S. 447	8-12, 15, 17
Phillips v. Com. of Int. Rev., 283 U. S. 589	9

IN THE
Supreme Court of the United States

OCTOBER TERM, 1948.

No.

IRENE B. WHETSTONE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION OF IRENE B. WHETSTONE FOR A WRIT
OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your Petitioner, Irene B. Whetstone, respectfully prays for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review the judgment of that Court entered on the 28th day of April, 1949. A transcript of the record in the case, including the proceedings in said Court of Appeals, is furnished herewith in accordance with the rules of this Court.

Summary and Short Statement of the Matter Involved.

1. The origin of the matter here in issue was a Complaint filed by petitioner, seeking to recover taxes illegally exacted, and paid under protest; to obtain removal of an invalid tax lien, restricting your petitioner's property rights, and, to obtain a declaratory decision concerning the constitutionality of the Revenue Laws which authorized the illegal tax exaction. A motion to dismiss your petitioner's Complaint for alleged lack of the Court's jurisdiction to grant relief prayed for was presented by respondent. The motion by respondent was sustained by the United States District Court for the Northern District of Illinois, Eastern Division, and the opinion of the lower Court was affirmed by the United States Court of Appeals for the Seventh Circuit. *Jurisdiction is therefore the only issue here and now contested.*

2. On the question of jurisdiction, your petitioner's standing in Court is predicated upon the Federal District Court's unconditional grant of judicial power as conferred by the Constitution of the United States of America. The specific jurisdiction referred to is that of the Federal District Court for the Northern District of Illinois, Eastern Division, in which district your petitioner resides.

3. Jurisdiction is also predicated upon the fact that your petitioner is a citizen of the United States of America, and that she has certain definite rights and immunities under constitutional government, which rights and immunities have been violated by respondent (the United States Government) (Rec. 2-3) with resulting loss and injury to petitioner (Rec. 4-5). That respondent refused amendingatory action (Rec. 5) and your petitioner is now involved in a controversy to which the United States is a party.

4. The Complaint in issue (Rec. 2) is predicated upon the specific fact that certain tax exactions were made from your petitioner (Rec. 4-5) and further tax exactions were attempted (Rec. 5) for which taxation petitioner disclaims liability, asserting that she is subject to taxation only under laws necessary and proper for carrying into execution the power to tax (Rec. 5, 6 & 7). *As the validity of certain statutes is thus challenged, the case arises under the laws of the United States.*

5. Your petitioner, in seeking recovery of money exacted from her as Federal Income taxes and paid under protest (Rec. 14); in requesting removal of an invalid lien (Rec. 14) and in asking for a Declaratory Decision (Rec. 14), bases her action upon the unconstitutionality of certain revenue laws (Rec. 6)—submitting that it is neither “necessary” nor “proper” to levy taxes for unconstitutional purposes (Rec. 6-7). *These purposes are evidenced by unconstitutional Acts and appropriations* (Rec. 11). *The case therefore arises under the Constitution.*

Contested Matter.

The jurisdiction of the Federal District Court in a case arising under the Constitution, and the laws of the United States, being a controversy to which the United States is a party.

Reasons Relied upon for a Grant of a Writ of Certiorari.

The judicial power of this Court is invoked upon the following grounds:

1. The United States Court of Appeals for the Seventh Circuit has affirmed a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which, by denying jurisdiction, denies your petitioner, a taxpayer, and a party injured by the application of

oppressive tax legislation, all opportunity to test the constitutionality of such legislation, an asserted constitutional right. *Such denial has the effect of reducing 50 million Federal income taxpayers to the status of second-class citizens. Such discrimination is repugnant to the Constitution.*

2. The United States Court of Appeals for the Seventh Circuit has affirmed the decision of the lower Court, which denied your petitioner the right of access to the Federal Courts (1) to recover taxes illegally exacted and paid under protest, loss and injury already suffered; (2) to obtain removal of an invalid tax lien which an agent of the respondent herein has been currently seeking to foreclose by distress methods, and (3) to obtain a declaratory decision to prevent threatened loss and injury from further illegal tax exactions. This decision is untenable, because in this case arising under the Constitution and the laws of the United States, to which the United States is a party, your petitioner, *an injured party, is left without any remedy at law. This situation is repugnant to the Constitution of the United States of America, being in complete violation of the "due process" clause of the Fifth Amendment.*

3. The decision of the United States Court of Appeals for the Seventh Circuit, in affirming the lower Court's decision, denies to the inferior Federal Courts the judicial power directly and unconditionally vested in them by Section 1, of Article III, of the Constitution, and this denial of jurisdiction deprives a citizen of the United States of the right to judicial intervention, redress or relief to which she is entitled under the Constitution according to the plain and unambiguous language of that instrument—a situation *repugnant to the Constitution.*

4. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the lower Court's decision, holds that Congress may limit and restrict the powers

which are conferred directly and unconditionally by the Constitution (Section 2, Article III) upon another and separate branch of the Federal Government—a *decision repugnant to the Constitution*, and a decision which makes it possible for the Federal Government, as a litigant, to dictate to the courts what matters they may consider and how they shall decide them—a *privilege repugnant to the fundamental principles of jurisprudence*.

5. In this case, decided by the United States Court of Appeals for the Seventh Circuit, (which affirmed the lower Court's decision) the underlying issue, the relief prayed for by petitioner, is the enforcement of the Constitution, and the constitutional rights and immunities which it guarantees to a citizen of the United States who is injured by the application of onerous legislation. In such circumstances, the oath of allegiance to the Constitution (paragraph 3, of Article VI) taken by every officer and representative of Government to support that instrument, *makes it incumbent upon the Federal Courts to defend their judicial power constitutionally conferred*.

6. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the lower Court's decision, accepts the false premise (as in the case of *Lockerty v. Phillips*, 319 U.S. 182, a case cited by respondent) that the judicial power is conferred by Congress, and that Congress may, therefore, limit or restrict the jurisdiction of an inferior Federal Court. Your petitioner asserts that Congress has no judicial power to confer, or no authority to interfere with the judicial power constitutionally conferred, and this question, so vital to the interests of the people, can properly be interpreted only in accordance with the plain and unambiguous language of the Constitution. *A decision which discounts the intelligence of its readers should be rejected by this Court.*

7. The decision of the United States Court of Appeals, which affirmed the lower Court's decision, which held, in referring to the Federal Courts, * * * "their only function being to interpret the statutes so as to promote and effectuate the disclosed intent of Congress" (Rec. p. 39) is a decision which would reduce the inferior Federal Courts to the status of police courts, established to enforce the will of Congress upon the people, and through such enforcement to completely thwart efforts by the people to maintain constitutional government. *Such derogation of the judicial power, which is constitutionally conferred, must be a first concern of this Court.*

8. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the lower Court's decision, accepts the theory that Congress has an unlimited, omnipotent power (in the "general welfare" clause of the Constitution, Section 8, Article 1) which is beyond the reach of the prohibitions contained in the amendments to the Constitution. *This decision presents an anomaly—amendments which do not amend, and it nullifies the Bill of Rights—the people's law which the Supreme Court is required to defend.*

9. The United States Court of Appeals for the Seventh Circuit, in affirming the lower Court's decision, upheld the theory that an Act of Congress which is labeled "general welfare" may not be subjected to judicial inquiry to determine if the label on the legislative package properly describes its contents, or discloses the true operation and effect of the Act. This theory, in practice, would limit judicial inquiry to a mere scrutiny of the title of an Act—a meaningless gesture not consonant with the powers conferred upon the Federal Courts by the Constitution. *The Supreme Court should reject such emasculation of the judicial powers.*

10. The decision of the United States Court of Appeals, in affirming the lower Court's decision, supports the theory that the Federal Government is possessed of a mythical power—sovereignty—a power not conferred upon the Federal Government by the Constitution, but which the Government has assumed, and which it now employs to defeat the Constitution and to subject the people to a government by decree. *This is in repudiation of the oath of allegiance to the Constitution taken by every officer and representative of Government, and it demands the attention of this Court.*

11. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the lower Court's decision, supports legislation (Title 28 U.S.C. Section 274D, 1946 ed. Section 400) which denies the Federal Courts their right to interpret and declare the law in matters pertaining to Federal taxation. The Constitution vests in the inferior Federal Courts (Section 1, Article III) full judicial power and extends such power to all cases, in law and equity, arising under the Constitution and the laws of the United States. The Federal Courts may not be denied those prerogatives consonant with the exercise of the judicial functions in the determination of controversies to which under the Constitution the judicial power extends. (See *Aetna Life Insurance Company v. Haworth*, 300 U.S. 227, at 239-240). And, when a constitutional question is involved, even the Supreme Court may not be denied its jurisdiction, as the power conferred upon Congress to regulate the appellate jurisdiction must be read in the light of paragraph 3 of Article VI of the Constitution—the oath required of the legislators to support the Constitution. A statutory enactment, denying appellate jurisdiction of a matter involving a Constitutional question, is in repudiation of that oath—an attempt to prevent the enforcement of the organic law. *Such enactments are invalid, and in view of the oath re-*

quired of the officers of this Court to support the Constitution, it is the responsibility of this Court to declare them so.

12. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the lower Court's decision, supports the theory that there are no limitations or restrictions upon the taxing power conferred upon Congress, and that, in carrying out this power, Congress is not limited by the "due process" clause of the Fifth Amendment. There is nothing in the Constitution to support the ruling that proceedings to secure prompt performance of alleged pecuniary obligations to the Government may ignore constitutional prohibitions. The decision in this case, therefore, may not be considered as an interpretation of the law, since it has no law to support it—statutory enactments not made in pursuance of the organic law being void for lack of authority. *The decision, therefore, is in the nature of "judicial legislation" which should be rejected by this Court as being in excess of the judicial power.*

13. The decision of the United States Court of Appeals for the Seventh Circuit, and the decision of the lower Court which it affirmed, relied upon a combination of statutes and Supreme Court opinions, which are in conflict with each other. *This situation presents a legal stalemate which warrants immediate remedial action by the Supreme Court.*

14. The decision of the United States Court of Appeals, affirmed the lower Court's decision that it lacked jurisdiction, citing as an authority the decision of *Massachusetts v. Mellon*, 262 U.S. 447, holding on that authority, that the Complaint of your petitioner does not present a justiciable controversy upon which relief could be granted *either before or after loss and injury is sustained*, while the same

decision of the lower Court, as affirmed, accepted the authority of *Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, which latter decision supports the "statutory scheme" for the summary collection of taxes *only* where there is other and adequate remedy at law. The application of these authorities in the decisions herein presents a situation which is untenable—one in which the taxpayer, while bound and shackled by one judicial decree, is deprived of her property under the alleged authority of another. *This situation requires the prompt investigation by this Court, as it represents the prelude to a government by decree.*

15. The decision of the United States Court of Appeals for the Seventh Circuit, affirms the lower Court's decision, which runs to the merits of the case, and which denies jurisdiction on the ground that the "factual situation" does not present a justiciable controversy—the Appeals Court basing its decision on the authority of *Massachusetts v. Mellon*, 262 U.S. 447. Its decision passes judgment upon the alleged facts without giving your petitioner opportunity to present her arguments and evidence in support of the facts, a decision in direct conflict with that in the case of *Moore v. New York Cotton Exchange*, 270 U.S. 593 at 608. *This presents a situation which calls for prompt analysis of the conflicting authorities, and a rejection of the offending decision.*

16. The decision of the United States Court of Appeals for the Seventh Circuit, relied upon the authority of the decision in the case of *Massachusetts v. Mellon*, 262 U.S. 447 (and the *Frothingham* complaint which was buried in the former proceedings). These decisions, if accepted as legal precedents and applied in their broader import would render it impossible for an individual to challenge the con-

stitutionality of a Public Law enacted by Congress (Rec. pp. 28-31). The application of these decisions would render the Bill of Rights vacuous and the Constitution unenforceable. A judicial decree in contravention of the Constitution should be no less vulnerable to attack than such decree if issued by the legislature. *It is the duty of the Supreme Court to consider and revoke its decisions when they are shown to be repugnant to the organic law.*

17. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the lower Court's decision, but relying on the authority of *Massachusetts v. Mellon*, supports the theory that the extent of the wrong inflicted by unconstitutional legislation should be permitted to influence the Court's decision in a case brought by an injured party. This theory is untenable and it is also in conflict with the decision in the case of *Patton v. United States*, 281 U.S. 276 at 292. The theory, furthermore, is not applicable to the case here in issue, inasmuch as your petitioner's loss from the application of unconstitutional legislation represents approximately one-fourth of her income, which is not a minute or inconsequential loss from your petitioner's viewpoint. The taxpayer's interest, as a litigant, is established through loss or injury of property or rights, and when loss or injury is shown to be substantial, his interest must be acknowledged, regardless of the ratio of his loss to the total Treasury funds or to the National debt. *A decision based upon an unsound theory should be rejected by this Court to prevent its being adopted generally as a legal precedent with resulting injustice.*

18. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the decision of the lower Court, but relying upon the authority of *Massachusetts v. Mellon*, 262 U. S. 447, did so without considering the dis-

tinction between the *Massachusetts v. Mellon and Frothingham* complaints, and that of the case here in issue. In the *Massachusetts v. Mellon and Frothingham* complaints the parties sought to enjoin the execution of an unconstitutional appropriation Act to prevent loss and injury which would be sustained by the parties as taxpayers in providing for the illegal expenditures. In the case here in issue your petitioner challenges the constitutionality of the Revenue Laws, and resists the exaction of illegal taxes, with respect to both the recovery of taxes paid under protest and the removal of the invalid lien, loss and injury being present in both instances, while her request for a Declaratory Decision refers to a declaration of the law as it applies to the "actual" controversy in issue — the loss and injury already sustained, by which declaration your petitioner seeks to avert further illegal exactions. Only the Supreme Court can remedy this error and prevent this decision from being generally applied in similar circumstances.

19. The decision of the United States Court of Appeals for the Seventh Circuit affirmed the lower court's decision, but placed such decision upon the authority of *Massachusetts v. Mellon*, 262 U. S. 447, and held that the controversy here in issue is not justiciable, because your petitioner (according to respondent's arguments in the District Court (Rec. p. 18), had not shown, in her original Complaint, what portion of the tax paid by her under protest was applied to unconstitutional appropriations. These appropriations were referred to by your petitioner only as evidence in support of the invalidity of the tax, which evidence your petitioner has not been permitted as yet to introduce. Respondent's arguments were therefore premature (Rec. p. 56). Respondent's premature arguments further contended that respondent's methods of handling

its receipts and expenditures would not permit such a showing by your petitioner. *This is an arbitrary theory to the effect that a debtor's liability for a debt is established if he cannot disprove liability by the creditor's books. The general application of such a theory in respect to liability for debt would be demoralizing. It should be promptly refuted by this Court.*

20. The decision of the United States Court of Appeals for the Seventh Circuit, in affirming the lower Court's decision, upon the authority of *Massachusetts v. Mellon*, 262 U. S. 447, held that the burden of proof is upon your petitioner. Under common law an alleged debtor is not responsible for a debt incurred without his knowledge and consent. Taxes assessed for purposes beyond the purview of the Constitution do not have the knowledge or consent of the taxpayer, and therefore the burden of proof is upon the Government. *This question of burden of proof is one for the Supreme Court to consider.*

21. The decision of the United States Court of Appeals for the Seventh Circuit, in affirming the decision of the lower Court, supported the theory that *Congress alone* has the power to appropriate money to promote the general welfare. *By this principle it appears to be the duty of the Court to inquire into charges brought by your petitioner in her original Complaint that such exclusive power was delegated to others* (Rec. p. 7-8), contrary to the interests of the people. The lower Court looked to the "factual situation" and denied jurisdiction. Its appraisal of the "factual situation", however, was incomplete and inaccurate as shown. Respondent's motion to dismiss, sustained by the lower courts, according to law, admits the facts,—the allegations of the original complaint, but denies petitioner's right to obtain judicial remedy, which right is improperly held to be under the control of respondent. There

was no *responsive* pleading by respondent to the questions raised by your petitioner in her appeal to the United States Court of Appeals for the Seventh Circuit.

22. In the wake of the decision of the United States Court of Appeals for the Seventh Circuit, for which this review is asked, agents of the respondent in the case here in issue, renewed their coercive and intimidating methods in an attempt to collect taxes, which are alleged to be owing by your petitioner. They seek to foreclose an invalid lien, the release of which your petitioner has asked in this case. An order has now been issued by the United States District Court for the Northern District of Illinois, Eastern Division (Rec. p. 66) in a case identified as No. 48-C-1, temporarily staying these coercive and intimidating methods for collection by distress, and similar injunctive process will be in order until petitioner is granted some adequate remedy at law. *Judicial inquiry by this Court is necessary to prevent prolongation of this legal impasse.*

23. The decision of the United States Court of Appeals for the Seventh Circuit, affirming the decision of the lower Court dismissing the cause for lack of jurisdiction to grant the relief prayed for, i.e., *to render a judgment in favor of plaintiff*, improperly upheld the judgment of the lower Court. It improperly upheld the judgment of the lower Court in assessing costs and charges (a matter not in controversy) *in favor of the defendant*. Clearly if the lower Court lacked jurisdiction to render a judgment in favor of one party, it lacked jurisdiction to render a judgment in favor of the other party. *A judgment requiring execution rendered by a Court denying its jurisdiction, has been held by this Court to be void. Nashville (The Mayor) v. Cooper, 6 Wall. (U. S.) 247, p. 250.*

Wherefore your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this

Court, directed to the United States Court of Appeals for the Seventh Judicial Circuit, commanding said Court to certify and send to this Court, on a date to be designated, a full transcript of the record and full proceedings had in this case, to the end that this case may be reviewed and determined by this Court as to the questions presented hereby, and that the judgment of the Court of Appeals be reversed, respondent's motion to dismiss be denied, and the case be remanded to the lower Court for adjudication on the merits of your petitioner's original complaint.

Respectfully submitted.

IRENE B. WHETSTONE,
Pro se

Chicago, Illinois
May 21, 1949

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.**

Opinions of the Courts Below.

The opinion of the United States District Court is reported in 82 F. Supp. 478, and is reproduced beginning at page 38 of the Record.

The opinion of the United States Court of Appeals for the Seventh Circuit was rendered orally at the conclusion of the hearing, and the judgment (Rec. p. 58) merely affirms the lower Court's decision, citing as authority *Massachusetts v. Mellon*, 262 U.S. 447.

Jurisdiction.

The grounds for jurisdiction are:

1. The judicial power, to consider a case arising under the Constitution, vested in the Federal Courts by the Constitution, Article III, Sections 1 and 2, as qualified and augmented by paragraph 3 of Article VI, of the Constitution.

The case in issue arises under the Constitution and the laws of the United States, is one in which the United States is a party, and the decision for which review is sought pertains to the jurisdiction of the inferior Federal Courts under their Constitutional grant, and involves Supreme Court decisions in conflict with each other and with the statutes, as set forth in Petition herein pages 3 to 13.

2. The date of the judgment to be reviewed was entered on April 28, 1949.

3. The judgment was rendered in a civil action brought in conformity with procedural requirements set forth in Title 28 U.S.C. Section 41-(20) (1946 ed. Title 28 U.S.C. Section 1346), which statute provides that a plaintiff may name the United States as respondent in a suit customarily brought against the officer responsible for carrying into effect an invalid Act where the officer is dead or is out of office.

4. Appeal to the United States Court of Appeals for the Seventh Circuit was in conformity with Title 28 U.S.C. 1946 ed. Section 1291, and this petition for writ of certiorari is brought in conformity with Title 28 U.S.C., 1946 ed. Section 1254-(1).

5. Cases which sustain the jurisdiction are:

Evans v. Gore, 253 U. S. 245, 251, 252, 255.

United States v. Butler, 297 U. S. 1, 58.

Swift & Co. v. United States, 111 U. S. 22, 29.

Old Colony Trust Co. v. Commissioner of Internal Revenue, 279 U.S. 716, 723.

United States v. Lee, 106 U.S. 196, 220, 221.

Martin v. Hunter, 1 Wheaton (U.S.) 304, 327-330.

Van Horne's Lessee v. Dorrance, 2 Dall. (U.S.) 304, 308.

Chisholm v. Georgia, 2 Dall. (U.S.) 419, 475-478.

Cohens v. Virginia, 6 Wheat. (U.S.) 264, 378, 379, 383, 392-394.

STATEMENT.

The Petition provides a Statement of the Case.

SPECIFICATION OF ERRORS.

The errors which petitioner will urge if the petition for writ of certiorari is granted are:

1. That, in view of the errors in the decision of the lower Court (Rec. 41-47, inc.) which will be urged if this petition is granted, the United States Court of Appeals for the Seventh Circuit erred in affirming the decision of the lower Court. It erred in affirming the judgment order of the lower Court.
2. The United States Court of Appeals for the Seventh Circuit erred in affirming the lower Court's decision on the authority of *Massachusetts v. Mellon*, 262 U.S. 447, for the reasons set forth in paragraphs numbered 13 to 20 inclusive, under the title herein "Reasons Relied upon for the Grant of a Writ of Certiorari" and for the further reason that the decision of the lower Court did not rely upon *Massachusetts v. Mellon*, 262 U.S. 447, as authority.
3. The United States Court of Appeals for the Seventh Circuit erred in rendering its decision without requiring respondent to submit arguments, orally or in its brief, in defense of its position *with respect to the actual questions in issue on appeal as set forth by petitioner*, or to state what propositions of law were relied upon to controvert the propositions of law relied upon by petitioner. Inasmuch as petitioner instituted the appeal, the points raised by her should provide the basis for arguments and for the Court's deliberations and decision, unless such points were controverted by respondent (see motion Rec. p. 56). There was no *responsive pleading* by respondent.

Summary of Argument.

The points of argument follow the reasons relied upon for the grant of a writ of certiorari, and are stated on pages 3 to 13 of the petition; they are also summarized in the index hereto. For the sake of brevity they are omitted at this point.

ARGUMENT.

Point 1.

(Reasons 1 to 12)

Inasmuch as the Constitution is the supreme Law of the Land, and it requires that all officers and representatives empowered by it shall take an oath to support it, may the Federal Courts deny or be denied their judicial power constitutionally conferred? Within the answer to this question lies the fate of constitutional Government.

The Constitution is the supreme Law of the Land, to which all legislative Acts must conform. It is the organic law which all judicial opinions must corroborate and affirm when constitutional questions are drawn in issue. There is nothing of greater concern to the people of this Nation than that constitutional government be preserved. There is no grant of power conferred by the Constitution which is not subject to judicial inquiry when an injured party charges in a controversy that such power is exercised in violation of the Constitution, its amendments or prohibitions.

In view of the oath of allegiance to the Constitution, which qualifies the powers conferred upon the Federal government, and binds its officers and representatives to support and defense of the Constitution, nothing could be more compelling than a petition to this Court by an injured party asking judicial investigation of a legal *impasse* which presents a situation repugnant to the Constitution, and which involves statutes, in violation of, or which operate to defeat, the Constitution. When such repugnancy concerns the jurisdiction of the Federal Courts,

and constitutes an attempt to prevent or limit judicial investigation into constitutional questions, or to prevent the enforcement of the organic law, the Court is obligated to defend its judicial power constitutionally conferred, and to repudiate enactments of Congress which would weaken constitutional government by denying to the Federal Courts their full judicial power. *Your petitioner does not specifically attack these statutory Acts, however; she takes the affirmative position that the full judicial power vested in the inferior Federal Courts, by the Constitution, is absolute, and percludes such statutory Acts as authority.* The Constitution does not require judicial officers to take an oath to support the statutory enactments of Congress.

Statutes which deny this Court its appellate jurisdiction in a case brought by an injured party to enforce the Constitution are invalid Acts, because they are in repudiation of the oath taken by the legislators to support the Constitution. They are attempts to prevent enforcement of the organic law.

In the case of *Marbury v. Madison* (1 Cranch 137 at 180) Chief Justice Marshall declared:

“ * * * it is apparent that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature. Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments for violating what they swear to support! * * *

“ Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitu-

tion is void; and that courts, as well as other departments, are bound by that instrument."

For other cases see:

Martin v. Hunter, 1 Wheat. (U. S.) 304, 327-330.
Chisholm v. Georgia, 2 Dall. (U. S.) 419, 475-478.
Cohens v. Virginia, 6 Wheat. (U. S.) 264, 378, 379, 383, 392-394.
Van Horne's Lessee v. Dorrance, 2 Dall. (U.S.) 304, 308, 309, 311, 312.
Hayburn Case (Report of Judges) 2 Dall. (U.S.) 409.
Ableman v. Booth, 62 U.S. 506, 518-520.
United States v. Klein, 13 Wall. (U.S.) 128 p. 147.
Hodgson v. Bowerbank, 5 Cranch (U.S.) 303, 304.
Pope v. United States, 323 U.S. 8, 8-14.

Point II.
(Reasons 13 to 20.)

Should a decree, written by the Court, which is in contravention of the Constitution, be less vulnerable to attack than such decree when issued by the legislature? And, what authority is responsible for reversing such decree, or for reconciling or modifying decisions in conflict with each other or with the statutes, if not the Supreme Court of the United States?

Legal precedents, cited as controlling authorities in connection with constitutional or federal questions, are, in the final analysis the product of the United States Supreme Court. Any decision of lesser weight concerning such questions may not be considered final or controlling. Therefore the precedents established by the Supreme Court must be the essence of justice, reasonableness and

accuracy, and in conformity with the supreme Law of the Land. Anything less is not in keeping with the lofty purpose to which the high Court is dedicated. Therefore it should be the privilege, the responsibility and the desire of this Court to reverse decisions shown to be in contravention of the Constitution, and to modify and reconcile decisions shown to be in conflict with each other and with the statutes.

The United States Court of Appeals for the Seventh Circuit had presented to it, by respondent herein, Supreme Court decisions which your petitioner firmly believes to be in contravention of the Constitution, in derogation of the powers which it confers, and in conflict with each other and with the statutes. It was not the prerogative of the Appeals Court to reverse, modify or reconcile such decisions, even were they convinced of the need for such action. The decision of the Appeals Court was rendered orally at conclusion of the hearing, without requiring arguments by respondent in support of its position, so as to afford your petitioner early opportunity to bring these matters to the attention of this Court by petition for a writ of certiorari. The questions raised by your petitioner—questions of vital public interest—have been deferred by the lower Court, to the higher authority of this Court, and these questions remain unanswered until this Court passes upon them.

Your petitioner submits that the Constitution is the supreme law. Anything which operates to overthrow it, whether it be legislation, or the construction placed upon it by the Federal Courts, must be left open to challenge, and the only place to register such challenge is with the Supreme Court of the United States.

Chief Justice Taney, speaking in his official capacity as head of the Supreme Court, in a dissenting opinion in the

Passenger cases (7 How. (U.S.) 283 at 470) made the following statement:

"I had supposed that question to be settled, so far as any question upon the construction of the Constitution ought to be regarded as closed by the decision of this Court. I do not, however, object to the revision of it, and am quite willing that it be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported".

See also *Barden v. Northern Pacific R.R. Co.*, 154 U. S. 288, 322.

Point III. (Reasons 21 & 22.)

Is it desirable to permit the establishment of legal precedents which (1) look to the merits of the case in denying jurisdiction, (2) inaccurately appraise the "factual situation" of the Complaint, (3) sustain a motion to dismiss, which, legally interpreted, admits the allegations of the complaint, but denies the plaintiff's right to judicial remedy, while holding that such right is under the control of the party admitting the allegations, (4) fail to require responsive pleading by respondent, and, (5) encourage coercive and intimidating measures which cannot be enforced?

The decision of the lower Court, affirmed by the United States Court of Appeals, denying jurisdiction, runs to the merits of the case, holding that Congress alone has the power to appropriate money to promote the "general welfare". If the lower Court had gone further into the "factual situation" presented by the Complaint of peti-

tioner, it would have discovered that one of the charges which your petitioner makes is that Congress delegated this exclusive responsibility to others. It is seen by this example how unreliable is the practice of basing denial of jurisdiction upon the factual situation. This indicates clearly that jurisdiction should never be "made to stand or fall upon the way the Court may chance to decide an issue as to the legal sufficiency of the facts alleged".
(1) It is the duty of the Supreme Court to discourage this practice.

(1) **Moore v. New York Cotton Exchange**, 270 U. S. 593, 608.

Fair v. Kohler Die & Spec. Co., 228 U. S. 22 at 25.
General Inv. Co. v. N. Y. C. R. R. Co., 271 U. S. 228, 230, 231.

United States v. Klein, 13 Wall. (U.S.) 128 p. 146.

The motion by respondent to dismiss the original Complaint of your petitioner, according to judicial authority, is in effect an admission of the allegations set forth in the Complaint, but is a denial of the right of your petitioner to obtain judicial remedy (1). Under such circumstances no court of law and equity properly may hold that the right to obtain such judicial remedy may be barred by the respondent, (in this case the Government), who in effect admits the charges. *A denial of jurisdiction upon that ground is equivalent to saying that the courts are powerless to uphold the organic law.*

Had respondent been required to present responsive pleadings to the questions raised by your petitioner on appeal (Rec. p. 57) the inconsistency of respondent's position would have been apparent.

(1) **Ickes v. Fox, 300 U. S. 82, 96.**

United States v. Lee, 106 U. S. 196, 218, 219.

Tindal v. Wesley, 167 U. S. 204, 213.

Where liability for a tax is disclaimed by the taxpayer, and the remedy at law is denied, the "statutory scheme", for the collection of taxes by distress, is so definitely and completely in violation of the due process clause of the Fifth Amendment, that no Court of law and equity may properly uphold such an illegal device for obtaining revenue. Agents of the Respondent have attempted by these coercive measures to collect from your petitioner the sums alleged to be owing under the lien for which petitioner asks release in her original Complaint herein, which matter has been denied jurisdiction. These methods of coercion and intimidation, lacking valid authority, did not prove effective, and a stay has now been ordered in that action (Case No. 48-C-1) (Rec. p. 66) by the United States District Court, for the Northern District of Illinois, Eastern Division. Unless this Court grants this petition, and decides the questions here involved, future injunctive relief will be in order and prolonged litigation will result. Your petitioner has abundant judicial authority for asking further injunctive relief from distress proceedings, where other remedy at law is denied (See Rec. p. 63).

CONCLUSION.

The United States Court of Appeals for the Seventh Circuit, as set forth in the foregoing argument, Point I, has, in affirming the lower Court's opinion, rendered a decision upon important constitutional and Federal questions which have not been settled by this Court; Point II, it has decided a Federal question in a way which brings decisions of this Court into conflict with the Constitution, with each other and with the statutes; Point III, it has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision.

Wherefore, Petitioner earnestly prays that the petition for writ of certiorari be granted, the case be reviewed, the judgment of the Court of Appeals for the Seventh Circuit reversed, respondent's motion to dismiss be denied, and the case be remanded to the lower Court for adjudication on the merits of your petitioner's original Complaint.

Respectfully submitted,

IRENE B. WHETSTONE,
Pro se.